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CITATIONS

Statute:

Revenue Act of 1936, c. 690, 49 Stat. 1648:

Section 906 (U. S. C. Supp. V, Title 7, Sec. 648) 2

318959—41

In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 1020

PRISCILLA BAKING COMPANY ET AL., PETITIONERS

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 253–254) is reported at 117 F. (2d) 375. No opinion was filed by the United States Processing Tax Board of Review, but its order of dismissal is printed in the record at pages 30–31. (See also Clerk's Memorandum, R. 250.)

JURISDICTION

The decision of the Circuit Court of Appeals was entered February 6, 1941 (R. 254). The petition

for a writ of certiorari was filed May 5, 1941. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the United States Processing Tax Board of Review erred in dismissing the proceedings before it for lack of jurisdiction.

STATUTE INVOLVED

Revenue Act of 1936, c. 690, 49 Stat. 1648:

> TITLE VII—REFUNDS OF AMOUNTS COLLECTED UNDER THE AGRICULTURAL ADJUSTMENT ACT
>
> * * * * *
>
> SEC. 906. PROCEDURE ON CLAIMS FOR REFUNDS OF PROCESSING TAXES.
>
> * * * * *
>
> (c) The allowance or disallowance of the Commissioner of a claim for refund under this section shall be final, unless within three months after the date of mailing by registered mail by the Commissioner of notice that a claim for refund of any such amount has been disallowed, in whole or in part, the claimant files a petition with the Board requesting a hearing on the merits of his claim, in whole or in part. Upon the filing of any such petition, the claimant shall be entitled to a hearing as provided herein, and within three months after the date of such

> filing the Board shall set a date for such hearing which shall be not more than two years from the date of filing of the petition. * * *

STATEMENT

Proceedings were instituted before the United States Processing Tax Board of Review by the Priscilla Baking Company and the Priscilla Baking Lunch Company to review the action of the Commissioner of Internal Revenue in rejecting claims for refund totaling $1,554.41 filed by the former (R. 5–8), and claims for refund totaling $1,013.68 filed by the latter (R. 52–55).

In the petitions before the Board it was alleged that the petitioners are Massachusetts corporations with their principal place of business in Boston (R. 5, 52). The claims for refund upon which the petitions to the Board were based are not included in the record, although the record in the appeal of the Priscilla Baking Lunch Company contains numerous exhibits (R. 59–250) purporting to contain information relating to the tax involved.

Copies of the letters of the Commissioner of Internal Revenue rejecting the several claims of each petitioner are set out in the record (R. 8–15; 55–58). Some of the claims of the Priscilla Baking Company were rejected on the ground that they were not filed after June 22, 1936, as required by Title VII of the Revenue Act of 1936 (R. 8–11), while others

were rejected on the ground that the petitioner did not pay any amount to the Government as tax under the Agricultural Adjustment Act, and that Title VII of the Revenue Act of 1936 does not authorize refund in such circumstances (R. 11–15). All of the claims of the Priscilla Baking Lunch Company were rejected on the latter ground (R. 55–58).

The Comissioner's letters of rejection, attached to the petition filed by the Priscilla Baking Company, show that the refund claims filed by that company were rejected during the period from January 5, 1937, to January 15, 1937, inclusive (R. 8–15). The petition of the Priscilla Baking Company was filed with the Board of Review on November 21, 1939 (R. 5).

The Commissioner's letters of rejection, attached to the petition filed by the Priscilla Baking Lunch Company, show that the refund claims filed by that company were rejected during the period from January 11, 1937, to February 10, 1937, inclusive (R. 55–58). The petition of the Priscilla Baking Lunch Company was filed with the Board of Review on December 5, 1939 (R. 52).

The Processing Tax Board of Review dismissed the petitions since they had been filed more than three months after the Commissioner's disallowance of the claims for refund, and were therefore untimely under Section 906 (c) of the Revenue Act of 1936 (R. 30–31, 250). The Circuit Court of Appeals affirmed (R. 253).

ARGUMENT

The claims for refund upon which this controversy is founded were denied in January and February 1937, whereas these proceedings were begun in November and December 1939 (R. 5, 8–15, 52, 55–58). The maintenance of the proceedings is therefore forbidden by Section 906 (c) of the Revenue Act of 1936, and the court below properly affirmed the dismissal of the petitions. No question calling for review by this Court is here presented.

Respectfully submitted.

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